In Re Holocaust Victim Assets Litigation regarding the Application of Bu...uborne for counsel fees Doc. 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE:

HOLOCAUST VICTIM ASSETS LITIGATION

MASTER DOCKET NO. CV. 96-4849 (ERK) (MDG) (Consolidated with CV-96-5161 and CV-97-461

OBJECTIONS OF CLASS MEMBERS TO REQUEST BY LEAD SETTLEMENT COUNSEL FOR ATTORNEYS FEES AND REQUEST FOR SCHEDULE FOR FORMAL SUBMISSIONS AND HEARING

The following class members in this case, through undersigned counsel, pursuant to Federal Rules of Civil Procedure 23, 54, and Local Rule 23.1 of the Joint Rules of the Eastern and Southern Districts of New York, hereby object to the fee request submitted by "Lead Plaintiffs' Settlement Counsel" Burt Neuborne.[1] The objectors are: David Schaecter, Leo Rechter, David Mermelstein, Alex Moskovic, Esther Widman, Fred Taucher, Jack Rubin, Henry Schuster, Anita Schuster, Herbert Karliner, Lea Weems, Israel Arbeiter, Sam Gasson, "G.K.," "L.K.," "F.K.," "D.B.," and "J.R.," (henceforth referred to as "Objectors" or "US Survivor class members").[2] These objectors request the opportunity to file a more detailed submission addressing the fee

[1] This filing on behalf of the individual named class members is without prejudice to the rights that have been asserted by some of them in their capacities as elected representatives of *bona fide* Holocaust Survivor groups (or by the groups themselves) to advance any argument regarding the settlement. The framing of these objections and requests by the individuals is made solely for the sake of convenience and the groups reserve the right to raise similar claims if the procedural context so requires.

[2] "G.K.," "L.K.," "F.K.," "D.B.," and "J.R." are Holocaust Survivors who receive subsidized social services through Jewish social service agencies in South Florida, whose benefits are inadequate to meet their prescribed medical and other service needs.

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request after having an opportunity to review Mr. Neuborne's actual request and supporting materials.[3]

Procedural Defects in the Fee Application

Objectors first learned about Mr. Neuborne's fee request when they were contacted on January 9, 2006 by a reporter from the Jewish *Forward* and notified that such a request had been filed. Upon inquiry, the undersigned learned that Mr. Neuborne submitted a formal petition and supporting materials which were provided to some but not all counsel of record. Counsel has requested that Mr. Neuborne supply those materials directly on an expedited basis. *See* letter dated January 11, 2006 from Samuel J. Dubbin to Burt Neuborne.

Mr. Neuborne's December 19, 2005 filing refers to a "Declaration of Burt Neuborne in Connection with Services Rendered to te Plaintiff-Classes, dated November 1, 2005." The Court docket has no such entry between November 1, 2005 and December 23, 2005. An entry dated December 23, 2005, Docket No. 2881, is not accessible on PACER. In any event, the undersigned is entitled to receive Mr. Neuborne's complete filing (and more if necessary) and all class members are entitled to notice of the request and an opportunity to object or comment.

Under the applicable rules and case law, Objectors are entitled to a reasonable opportunity to inspect the basis for Mr. Neuborne's fee request, obtain discovery if Mr. Neuborne's actual filings are insufficient, file formal adversarial submissions, and have a hearing on the merits of the request. FRCP 23(h)(1) and (2), 54(d)(2)(D), Local Rule 23.1, and 2003 Supplementary Notes to Federal Rule of Civil Procedure 23(h).

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[3] This filing is without prejudice to the Objectors' right to add the names of other class members who may want to join the objections after having an opportunity to review Mr. Neuborne's filings within the time set by the Court.

Objections

First, Mr. Neuborne has repeatedly represented that he is serving as "Lead Plaintiffs' Settlement Counsel" on a "pro bono" basis, or "without fee," or having "waived fees." Those representations were made in this Court, in the Second Circuit Court of Appeals, in the U.S. District Court for the Southern District of Florida, and in numerous publications.[4] Those representations have been integral to Mr. Neuborne's arguments justifying the entire settlement scheme, including the current allocation, and his opposition to the U.S. Survivors' efforts to obtain a greater allocation of Looted Asset Class settlement funds in this case. Mr. Neuborne brandished his "pro bono" status as a badge of honor that implied his actions (and the process itself) were above reproach because he had no financial interest in the case.[5] That pretense is now proven to be a sham. Mr. Neuborne is judicially and equitably estopped from now seeking to be *personally* compensated from the very settlement funds which he so adamantly opposed being used to benefit class members – poor Holocaust Survivors in need of basic life supporting services – who live in the United States.

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[4] *See, e.g.* Declaration of Burt Neuborne Concerning the Award of Attorneys Fees, February 22, 2002; Letter from Burt Neuborne to Leo Rechter, President of the National Association of Jewish Holocaust Survivors (NAHOS. Inc), July 9, 2002; Letter from Burt Neuborne to Alex Moskovic, President, Child Survivors/Hidden Children of the Holocaust, Inc., July 10, 2002; "Students Help Holocaust Victims Recover Funds," *University of Virginia Law School*, www.law.virginia.edu/home2002/html/news/2001/holocaust.htm; "Lawyers Want Millions as Cut of Holocaust Settlement," *The Plain Dealer*, August 15, 2000; Joseph Berger, "Creative Counsel," *New York University Law School Magazine*, Autumn 2004, www.law.nyu/pubs/edu/magazine/autumn 2004, at 19; Lead Settlement Counsel's Brief Opposing the Holocaust Survivor Foundation USA, Inc.'s Opposition to the District Court's Allocation of the Settlement Fund, in *Friedman v. Union Bank of Switzerland*, Case No. 04-1898 and 1899 (CON) in the United States Court of Appeals for the Second Circuit ("*Swiss Bank Allocation Appeal*"), at 14, 61-62; Lead Settlement Counsel's Brief In Opposition to Samuel J. Dubbin's Request for Attorney's Fees and Expenses, *Friedman v. Union Bank of Switzerland*, Case No. 04-1898 and 1899 (CON) in the United States Court of Appeals for the Second Circuit, at 4, note 3; Filing of Burt Neuborne on behalf of Hungarian Objectors, "Reservations Concerning Attorneys Fees," in *Rosner v. United States of America*, Case No. 01-1859, in the United States District Court for the Southern District of Florida ("*Rosner*") July 21, 2005, at 5 and footnote 4; Transcript of Fairness Hearing in *Rosner*, September 26, 2005, at 28-30.

Moreover this Court, in rejecting Objectors' attorney's application for attorneys fees and expenses incurred in representing the interests of various class members including the U.S. Survivors and Survivor groups and Thomas Weiss, M.D., explicitly cited and relied upon Mr. Neuborne's status (among other lawyers) as acting "pro bono" or "without fee."[6] The Court similarly relied on Mr. Neuborne's supposed pro bono status in its fee decisions for other counsel in the case.

Objectors note the further outrageous scenario presented that if the Court awards Mr. Neuborne the sum he is allegedly seeking, he would have *personally* received more money per year ($700,000) from the Swiss settlement fund for his "labor on behalf of the Plaintiff-Class," as a reward for opposing the rights and interests of American Survivors, than the average annual amount of funds allocated by the Court (which

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[5] The Second Circuit cited Mr. Neuborne's "pro bono" status in its decision affirming the Looted Assets Class allocations challenged by Objectors and others. *In re Holocaust Victim Assets Litig.*, 2005 WL 2175955, *3 (2d Cir. Sept. 9, 2005).

[6] *See In re Holocaust Victim Assets Litig.*, 270 F.Supp.2d 313 (E.D.N.Y. 2000). *See also* Lead Settlement Counsel's Brief In Opposition to Samuel J. Dubbin's Request for Attorney's Fees and Expenses, *Friedman v. Union Bank of Switzerland*, Case No. 04-1898 and 1899 (CON) in the United States Court of Appeals for the Second Circuit, at 4, note 3, and citations therein.

Neuborne supported and defended) for *all Survivors in the Looted Assets class living in the United States* who are elderly, sick, and too poor to provide for their basic life-sustaining needs. ($600,000 including funds for Canada).

Second, the US Survivors have, since Mr. Neuborne failed to honor the commitment he made to them to induce the withdrawal of their original allocation appeal in May of 2001, been perplexed at the numerous, and conflicting roles he has been playing. He claims to represent the entire class but vigorously opposed the efforts of approximately 30% of the class (and 20% of the world Survivor population) to receive a fair share of the Looted Assets Class funds.[7] He claimed to represent the "Plaintiff-Class" but opined on several occasions that he was bound to defend the Special Master's recommendations and the Court's decisions if they were "within their discretion," regardless of the harm inflicted on his "clients" by such recommendations or decisions. As part of the Second Circuit Court proceedings, this Court acknowledged that in fact Mr. Neuborne actually was not representing any plaintiffs, but was representing the Court itself.[8] This came as no surprise to the Objectors but clearly belies Neuborne's various claims to be an advocate for Holocaust survivors in the class, and to claim compensation for representing class members.

Objectors are entitled to ascertain from Mr. Neuborne's fee request whether he has indeed worn even more than the three hats described above. According to his general descriptions, he actually played a hand in "developing and implementing the settlement's bifurcated structure" and "assisting in designing a *cy pres* mechanism for the Looted Assets class." These two devices are among the most harmful results to the Looted Assets Class members in the United States and if Mr. Neuborne indeed participated in the fashioning of the very Special Master recommendations and Court decisions he then claimed he had an "obligation" in his role as "Lead Plaintiffs Settlement Counsel" to defend because they were within the "sound discretion" of the officials with whom he consulted or assisted, then the entire allocation process is even more of an abuse of the Nazi victims in the Swiss Bank case it was supposed to benefit – and of the Court's discretion – than the U.S. Survivors previously imagined.

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[7] In so doing he also opposed the rights of Israeli Survivors who comprise a substantial percentage of the Looted Assets Class some 45% of the world Holocaust Survivor population.

[8] Chief Judge Edward R. Korman Memorandum Order dated September 13, 2004, Docket No. 2426.

Third, Objectors agree with and adopt and incorporate herein the objections raised by Robert Swift in his December 29, 2005 submission, for the reasons he expressed.

Fourth, Objectors note that Mr. Neuborne's application is untimely under Federal Rule of Civil Procedure 54(d)(2)(B).

Finally, Objectors reserve the right to present any other objections that might arise on review of all of Mr. Neuborne's time records and his description of the services and activities he claims to have performed.

WHEREFORE, Objectors urge this Court to deny the petition of "Lead Plaintiffs Settlement Counsel" Burt Neuborne for attorneys fees in its entirety on the grounds of judicial and equitable estoppel, conflict of interest, failure to adequately represent the Looted Assets Class as a whole, untimeliness, and the other reasons stated above and expressed in the opposition papers of Robert A. Swift.

Objectors further request that the Court issue a schedule setting forth the framework in which it intends to proceed with Mr. Neuborne's request, including (1) the manner by which Mr. Neuborne's petition will be "directed to class members" under FRCP 23(h)(1); (2) reasonable deadlines by which any class members may object and/or make adversarial submissions under FRCP 23(h)(2) and 54(d)(2)(D); and (3) a date and time for a hearing on the petition under Local Rule 23.1.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by overnight mail upon Burt Neuborne, Esquire, 40 Washington Square South, Room 305, New York City, New York, 10012, on January 13, 2006 and by U.S. mail on the other counsel on the attached service list, ~~this ___ day of January~~ on January 17, 2006.

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